

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

4 - - - - - x

5 In the Matter of:

6

7 PURDUE PHARMA L.P.,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 December 19, 2019

17 2:03 PM

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21 B E F O R E :

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

Page 2

1 HEARING re Notice of Agenda for December 19, 2019 Omnibus
2 Hearing (ECF 659)

3

4 Motion to Extend Time/Motion of Debtors for Entry of an
5 Order Extending the Deadline to Assume or Reject Unexpired
6 Leases of Nonresidential Real Property (ECF 599)

7

8 Motion to Extend Time/Motion of Debtors to Extend the Time
9 to File Notices of Removal of Civil Actions (ECF 600)

10

11 Application of the Debtors for an Order Authorizing Them to
12 Retain and Employ Jones Day as Special Counsel, Nunc Pro
13 Tunc to the Petition Date (ECF 601)

14

15 Declaration of John J. Normile in Support of the Application
16 of the Debtors for an Order Authorizing Them to Retain and
17 Employ Jones Day as Special Counsel, Nunc Pro Tunc to the
18 Petition Date (ECF 603)

19

20 Application to Employ PJT Partners LP as Investment Banker /
21 Debtors Application for Authority to Employ PJT Partners LP
22 as Investment Banker Nunc Pro Tunc to the Petition Date

23

24 Objection of the United States Trustee to Entry of an Order
25 Approving the Retention of PJT Partners LP as Investment

Page 3

1 Banker for the Debtors (related document(s) 430) filed by
2 Brian S. Masumoto on behalf of the United States Trustee
3 (ECF 471)

4

5 The United States Trustee's (i) Supplemental Objection to
6 the Retention of PJT Partners as Investment Banker for the
7 Debtors (ii) Objection to PJT's Motion to Seal and (iii)
8 Request to Unseal PJT's Client Information (related
9 document(s) 589, 430) filed by Brian S. Masumoto on behalf
10 of United States Trustee (ECF 6446)

11

12 Reply to Motion the United States Trustee's (I) Initial and
13 Supplemental Objections (ECF 656)

14

15 Application to Employ Ernst & Young as Auditor / Debtor's
16 Application to Employ Ernst & Young as its Auditor, Nunc Pro
17 Tunc to the Petition Date (related document(s) 432) filed by
18 Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF 499)

19

20 Objection of the United States Trustee to Entry of an Order
21 Approving the Retention of Ernst & Young LLP as the Auditor
22 for the Debtors (related document(s) 432) filed by Brian S.
23 Masumoto on behalf of United States Trustee (ECF 485)

24

25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. Okay, good
3 afternoon. In re Purdue Pharma, et al.

4 MR. HUEBNER: Good afternoon, Your Honor. For the
5 record, Marshall Huebner of Davis Polk & Wardwell, LLP on
6 behalf of Purdue Pharma, LLP, its 22 subsidiaries and Purdue
7 Pharma, Incorporated, its general partner.

8 Your Honor, before we begin addressing the very
9 few items on the agenda, I wanted to provide a few status
10 updates as we approach year end. I think most of them are
11 positive and highlight the progress that has been made on
12 many fronts in the first 90 days of this exceedingly
13 complicated situation.

14 THE COURT: Okay.

15 MR. HUEBNER: Number one, we have been advised
16 that no dissenting states are exercising the first of their
17 two offramps to flip into enjoined status, and begin their
18 appeal. That deadline today for the first of the two, the
19 second is February 21. So we all continue to push forward
20 with diligence and negotiation, lots of things going on as
21 you'll hear in a few minutes, hopefully at least until April
22 8th, if not beyond.

23 Number two, as Your Honor may know, either from
24 the docket or from the many news reports, the report of the
25 special committee detailing all cash transfers to the

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1 shareholders on and after January 1, 2008 was filed on the
2 docket on Monday night, weighing in at 366 pages. Report 1A
3 catalogues all cash distributions to or for the benefit of
4 the shareholders, including salary, benefits, expense, and
5 indemnity reimbursements, as well as the distributions since
6 January 1, 2008.

7 To give the Court comfort, the numbers in Report
8 1A line up with extreme precision to numbers that the
9 Debtors themselves previously disclosed or mentioned to the
10 Court, either at prior hearings or in our pleadings. There
11 also is actually a reconciliation in the report of the full
12 25-year distribution history that was given to the MDL
13 plaintiffs, many of the States and other governmental
14 entities 14 months ago in October 2018, that I also referred
15 to at prior hearings.

16 I think the reconciliations of that long period
17 are extremely minor, but to show the special committee's
18 attention and focus on cataloguing every penny, I think
19 again the Debtors' notable commitment to quite an unusual
20 level of transparency continues to be proven out, which is
21 one of the reasons that we decided that it was appropriate
22 to file it publicly.

23 Number three, Your Honor, is with respect to Dr.
24 Landau, as a quick refresh the Debtors reached a \$1.3
25 million settlement with the UCC on his 2019 incentive

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1 compensation, prior to the December 4 wages hearing. The
2 U.S. Trustee, by the way, with whom I spoke this week
3 considers their objection resolved by Your Honor's ruling,
4 because they were really objecting, as you may remember, to
5 everything on the grounds that it was disguised retention
6 plans. They have no remaining objection to press at this
7 time as per Mr. Schwartzberg.

8 With respect to Dr. Landau, the accommodation that
9 was reached, or the settlement that was reached, I should
10 say, represents a 62 percent reduction of the originally
11 proposed incentive compensation. It also includes moving
12 the payment date from what has been true for several decades
13 of March, to instead being 50 percent on each of June 2020
14 and September 2020, essentially having his 2019 incentive
15 comp become kind of almost de facto 2020 retention.

16 It also layers in the same anti-secretion
17 provision that's applicable to the Sacklers themselves, and
18 contains the identical claw back provisions that Your Honor
19 has already approved for all of the participants, and that
20 all the parties to the last hearing, including the
21 dissenting states, negotiated with us and signed off on.
22 All that said, we are reluctantly going to adjourn this last
23 matter on our wages until the January hearing, as we got a
24 rolling list of questions from non-consenting states after
25 the hearing. I think those questions have now been

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1 answered, (indiscernible) one last charge just to confirm a
2 number.

3 And we were a little bit surprised that it ended
4 up being a bit of post-hearing discovery, candidly, months
5 or weeks after the objection deadlines, but we are trying
6 very hard to get this done consensually, and so rather than
7 push it at today's hearing, we hope that maybe a couple of
8 more weeks of conversation and a couple of more creative
9 ideas will maybe get this off of the contested docket, and
10 we can move something forward consensually.

11 THE COURT: Okay.

12 MR. HUEBNER: Relatedly, Your Honor, the Board of
13 Directors of Purdue received a letter on Tuesday from 11
14 senators, nine of whom represent the non-consenting states,
15 parenthetically four of whom are running for president of
16 the United States, attacking the company and making what we
17 believe to be unfounded claims against both Dr. Landau and
18 Purdue. The letter says things like "Purdue is still more
19 concerned with motivating high-level employees to sell more
20 drugs than it is with public health, or helping states
21 ravished by the opioid crisis." First of all, I clearly
22 think they meant ravaged, not ravished. We'll leave that
23 alone.

24 Second of all, and much more importantly, this is
25 just, as I believe the Court knows, and I actually hope that

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1 all parties in the court today know, accusations like his
2 are just untrue, flatly untrue, and quite unhelpful. What
3 the current teams at Purdue and their advisors are doing,
4 frankly, day and night, is working to preserve and maximize
5 the company's valued for very good reason, because one
6 hundred percent of that value, as we seem to have to discuss
7 at virtually every hearing, is slated to be devoted to,
8 contributed to and devoted to addressing the opioid crisis,
9 and minimizing harm and doing good in society.

10 I am of course not going to belabor the myriad
11 steps that the company has taken, most or many under the
12 Court's supervision, on its pathway to becoming a public
13 benefit corporation, because Your Honor is well aware, as
14 these senators seemingly are not, of the PVC model itself,
15 which is the raison d'etre of these cases, the massive self-
16 injunction agreed to, our staunch and continued support of
17 the emergency relief fund, more on that in a few minutes,
18 the total lack of promotion and detailing of opioids since
19 2018, and the prepetition elimination of 100 percent of the
20 opioid sales force. It is really very unfortunate that so
21 many either don't understand or are refusing to admit that
22 they understand how radically this company is transforming
23 itself on its way of becoming a public benefit entity.

24 Number four, the selection of the monitor for the
25 self-injunction, as originally suggested by the Court, is

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1 very close to done. Although it is the Debtor's hire, we
2 have run I think an extremely inclusive process, and have
3 both included candidates for consideration that were put
4 forward and have conducted interview sessions including both
5 states' groups and of course the UCC.

6 The hope is that we will be in a position after
7 another call or two to actually hire a candidate and can get
8 that in place. You know, unfortunately there are lots of
9 lines, and lots of people, and lots of calls on really, many
10 optics in this case, and just, you know, we should have a
11 full-time company that just does meetings logistics, because
12 it often feels like we need one.

13 Another positive report, Your Honor, number five
14 of my list of nine is the protective order. I don't usually
15 say praise the lord at hearings, but the protective order is
16 very, very, very close to done and might actually even be
17 done as of very late last night. And so hopefully we will
18 be able to bring that forward to the Court quite soon. It
19 has been very complicated in part because it obviously
20 involves family information, shareholder information,
21 company information, and many, many parties at different
22 levels who want access to all sorts of different levels of
23 information, I think will actually provide for more access
24 to confidential information than any deal I have ever seen
25 in more than a quarter of a century of practice.

1 Number six, Your Honor, as the Court probably
2 would not remember, given the endless things that the Court
3 juggles, Paragraph 17(b) of the stipulation entered and
4 approved by the Court among the Debtors, the UCC and the
5 shareholders, contemplated that a presentation be made by
6 the shareholders detailing their defenses, essentially, and
7 their point of view on the liability.

8 On Friday, December 9th about, I don't know, 70 or
9 so people met in person, with dozens more on the phone, in
10 fact I think the phone system crashed about four times
11 because of the sheer weight of the participants from the
12 Debtors, the unsecured creditors' committee, the ad hoc
13 committee and the dissenting states' committee, met to hear
14 the shareholder presentations required by the stipulation.
15 I think the presentations, I actually think they were over
16 700 pages in length, and I think it's fair to say are still
17 being digested by multiple parties with lots of follow-up.

18 But just to give the Court comfort that, you know,
19 obviously the docket is just the tip of the iceberg. This
20 and many other categories of diligence information flow,
21 diligence request, diligence demands continue to be underway
22 among various parties in the case.

23 Number seven, the stipulations with the two groups
24 of states, although we're actually in part at least living
25 under them already, as we are living under the protective

1 order, although it's not actually entered yet. We
2 constantly send things, you know, to be governed by the
3 terms of the (indiscernible) protective order are also
4 taking their hopefully final short laps, and we can bring
5 those forward soon for approval by the Court, I hope.

6 Number eight is the emergency relief fund. This
7 is moving much more slowly than the Debtors would like, and
8 that is the source of a little bit of frustration to us.
9 The good news is that we have been advised by the states
10 that they met in-person last week. The consenting and
11 consenting together on a lot, of many other issues as well.
12 I will be given a joint proposal that was promised for this
13 week. We hope it's still this week. If not we assume it
14 will be very, very early next week.

15 The UCC is also very hard at work, as are we, on
16 kind of structural issues and putting together the meat on
17 bones. We very much hope to bring this forward formally,
18 efficiently and definitively in January for launch. There
19 will obviously be things that have to be done after launch,
20 you know: personnel, grant-making, structure, where the
21 money goes, all that is a complicated issue. It's a lot of
22 money, and its stakeholders' money, and it is a complicated
23 issue. But it's getting time to get this done and start
24 getting this money out, you know, three months of all saying
25 that, you know, many of us think this is a good idea, is

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1 long enough for money to be sitting in a bank waiting to
2 start saving lives.

3 Number nine, Your Honor, is a brand-new
4 development as of, sort of-ish last night. An issue was
5 raised to us, I think 15, 16 or so ago days by the DOJ, and
6 we have round robin-ed it in the last 18 hours with the
7 creditors' committee and a couple of the other groups,
8 including the states' groups. It's actually pretty
9 technical, but it is very important to them, and one of the
10 things I learned on is that in general, if one can
11 accommodate the Department of Justice, that often appears to
12 be a better approach than declining to do so.

13 So here we go. We have agreed to seek to extend
14 for 90 days, subject to further extensions, the Rule 4007(c)
15 deadline for filing a complaint to determine the
16 dischargeability of certain debts as set forth in Section
17 523 of the Bankruptcy Code. We will be filing a motion,
18 potentially on presentment in the very near future possibly
19 as early as tomorrow. What's the issue? The issue is as
20 follows.

21 THE COURT: I'm sorry, if there's an agreement,
22 I'm not sure why you need a motion.

23 MR. HUEBNER: Yes, because it actually would apply
24 to all parties in the case, not just to the DOJ. Their
25 concern, based on the Hawker Beechcraft decision was later

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1 reversed, is that possibly there's a 60-day deadline after
2 the 341 meeting to file non-dischargeability complaints.
3 Since we have no desire in the world for anyone to start
4 filing those, this is kind of a comfort order that can be
5 entered.

6 THE COURT: Okay.

7 MR. HUEBNER: And make clear that at -- and
8 without taking any views on whether there is such a deadline,
9 or whether there are non-dischargeable --

10 THE COURT: But the point is, it would apply to
11 everyone, not just signatories.

12 MR. HUEBNER: Exactly. Yeah, it's not a stip just
13 with the DOJ.

14 THE COURT: Okay.

15 MR. HUEBNER: It's a motion just extending, to the
16 extent that any deadline exists, and frankly not at all sure
17 one does, but again, it's easier to file motions like this.
18 The, the, the date in this case, because it is keyed off of
19 the 341 meeting, is actually January 6. I think there are
20 expectations, that if the Court is okay with it, since we
21 don't want to put a special hearing on for this, that either
22 the order could be entered before then, or that the
23 deadline, if there is one, would be deemed bridged until we
24 get to our January omnibus hearing when it can be heard.
25 We've actually discussed the issue with the UCC and the

1 States.

2 THE COURT: I'm happy to sign a bridge order if
3 someone thinks there needs to be a bridge order, but I don't
4 think there needs to be one.

5 MR. HUEBNER: Yeah, I'm guessing that's probably
6 all the comfort the parties need, since again, the one
7 potentially negative decision was actually reversed. So
8 this I think is appropriately being very cautious, since
9 this obviously is a case where one could imagine that there
10 were people who would want to talk about governmental claims
11 that give rise to non-disagreeability, and we understand
12 that. And so as long as that's okay with Your Honor, we
13 will be filing a motion. And obviously it's 90 days for
14 now, Judge, to extension.

15 Candidly at the end of the day, I get -- our view
16 would likely be that we should extend this to the end of the
17 case or something like that. Because as of right now, there
18 doesn't seem to be a reason to sort of force people to
19 consider filing non-dischargeability complaints when we're
20 in the middle of trying to work out the whole case. But
21 we'll see what the new year brings us, and we'll see what
22 happens when the initial request, the 90-day period is
23 potentially up for expiration.

24 So in summary, Your Honor, I think that we
25 collectively, and collectively is really, I think every

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1 group that is in this room, although the days have not
2 always been easy, the nights have not always been easy, I
3 think we have actually accomplished an extraordinary amount.
4 The intense and often hard-fought first 90 days, the arena
5 and architecture of the case has now been built. We have at
6 least 100 remaining days in front of us until April 8th, and
7 hopefully thereafter. And the focus and the first part of
8 2020, we trust will be very much on advancing the case.

9 On company and shareholder diligence, in
10 furtherance of the PVC term sheet that was agreed to with
11 the ad hoc committee and the shareholders which continues to
12 be our plan structure that we are advancing, meeting with
13 various credit constituencies. This is an initiative that
14 the Debtors and the UCC are jointly undertaking to have
15 people come in and explain both the merits and the amounts
16 of each sort of (indiscernible) category of claim, so we can
17 begin to form our views on allocation as a fiduciary, taking
18 very much in mind of Your Honor's repeated admonitions that
19 there has to be a way to cut through the gordian knot of
20 this case, and not have it devolve into what could be in
21 fact years of litigation and contested matters, sort of how
22 to divide the pie up, et cetera, that Purdue's asset base
23 represents in the public service.

24 And to that end, our hope is that 2020 will enable
25 both us and others to keep their focus on the future, and

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1 how to ensure that the best possible outcome is achieved
2 that does the most to put Purdue's substantial asset base to
3 work wholly and exclusively, to help our country address and
4 ameliorate the horrific opioid crisis that has hit so many.
5 As Your Honor has noted I think that three different
6 hearings already, Purdue can't give more than 100 percent of
7 itself, though 100 percent has been on offer since even
8 before we filed the proceedings, and working to make that
9 100 percent as impactful and socially improving, improving
10 socially the U.S. system is what lies before all of us.

11 Your Honor, I'll turn the podium over now to Chris
12 Robertson, because I do think we need to get through the
13 agenda and make sure we get our orders entered, and then
14 I'll come up to address one final topic at the conclusion of
15 the hearing. Unless, of course, the Court has questions.

16 THE COURT: Well, before you do that, I had a
17 question about the interim distribution emergency fund. You
18 said that the Debtors and the committee were working
19 together, and you were waiting for having had some
20 discussions for a response from the States. Has there been
21 more interaction in that, among those three groups?

22 MR. HUEBNER: Yeah, sorry, Your Honor, I probably
23 spoke poorly. Let me explain -- Mr. Preis is welcome to --

24 MR. PREIS: Can I address that, Your Honor?

25 THE COURT: Sure.

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1 MR. HUEBNER: Oh, yes --

2 MR. PREIS: You want me to do it here or there?

3 THE COURT: That's fine, the microphone will pick
4 you up.

5 MR. PREIS: Your Honor, I don't want to -- I am
6 going to disagree with Mr. Huebner for a second, and the
7 things he said about the states is not exactly correct. We
8 had an initial call, meeting with the states, the Debtors,
9 and the creditors' committee a while ago. We all agree that
10 the creditors' committee, because we are the ones who kind
11 of raised this issue, would take pen to paper first, we then
12 get -- send it to the Debtors, and then we send it to the
13 states. So that's the process that's been going on.

14 THE COURT: All right.

15 MR. PREIS: We are at the point now where I think
16 tomorrow we're sending, going to be sending it to the
17 Debtors. It's taken us a while as a committee to put
18 together the architecture for it. I know the States are
19 also working on something, and we've told them, look, we --
20 once, we're happy to obviously get whatever proposals they
21 have, but the idea would be -- you know, they asked us to
22 put pen to paper and actually write out the proposal, which
23 is what we're doing. So that's --

24 THE COURT: And you're going to be sharing that
25 with them.

1 MR. PREIS: Of course, of course. I mean, that's
2 the idea, is it goes to them.

3 THE COURT: Okay, fine.

4 MR. PREIS: And there's no confusion about that.

5 THE COURT: And I don't -- okay, this is an
6 important issue, and I -- Mr. Huebner is talking through a
7 number of points quickly. I just want to make sure I
8 understood the process there.

9 MR. HUEBNER: To be clear, I actually don't think
10 we said different things.

11 THE COURT: No, it was just, I want to make sure I
12 understand what was going on on that point.

13 MR. HUEBNER: The, the --

14 THE COURT: And who was involved at what stage,
15 and --

16 MR. HUEBNER: The parties are all interacting,
17 Your Honor. You know, the goal is to ultimately end up as
18 sort of a committee of sorts that works this forward. My
19 understanding, and maybe I'm slightly misinformed, and so be
20 it, was that in part, what we were getting back was a
21 substantive proposal about where the money should actually
22 go, not just a structural proposal about how to set it up,
23 but I guess we'll see when it comes in.

24 And but again, to the extent that your thought was
25 only we're talking and then they're going to drop something

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1 in, not at all. There's already you know, each of the four
2 sort of legs of this table have nominated specific
3 individuals. Their request was to have people with public
4 health actually expertise and experience to be involved in
5 these issues, and there is kind of a working group to set
6 up. It's just moving too slowly, and we're trying to figure
7 out how to, how to accelerate --

8 THE COURT: And one level, I suppose that's true,
9 because everyone would like to have it happen sooner rather
10 than later. But on the other level, I understand that not
11 only the structure for this, but also as you said, where the
12 funds go, is something that people should consider
13 carefully, and reach as much agreement on as they can, just
14 as you would whenever you were spending significant amounts
15 of money on something important. So I, I appreciate the
16 update. I am glad that people are working on it at this
17 level, and I fully believe, based on everything that I've
18 heard in the case, filings in the case, that people will
19 continue to work very diligently on it.

20 MR. HUEBNER: And again, Your Honor, I think look,
21 to be fair, I think we've actually discussed this at greater
22 length, and probably with more sophistication at prior
23 hearings, we don't minimize obviously any of that. How the
24 money gets spent, where the money gets spent, who decides
25 how it gets spent are issues that cut horizontally and

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1 vertically across many different stakeholders and their own
2 legal, sworn obligations, oaths of office that are on
3 constituencies, people who come at it obviously from the
4 perspective of victims and families who have lost loved
5 ones, who have their own views, including their own views on
6 the government's role and the like, it is very complicated.

7 I was, I was making only a general point, and
8 there was no criticism of any party, even remotely
9 suggested, that you know, Purdue has a fair amount of cash
10 on its balance sheet, and has been trying to figure out a
11 way for a while how to put more of it to use, to start
12 helping immediately, and maybe, you know, I don't want my
13 personal hope that we can get this going and start actually
14 using the money for good to suggest that anybody's not doing
15 what they're supposed to on the right schedule.

16 THE COURT: Okay.

17 MR. HUEBNER: So with that, let me turn it over --

18 THE COURT: Well, just one other comment. I'm
19 also pleased to hear that you're close on the monitor
20 appointment, and I think both of those things, the emergency
21 distribution and the monitor appointment, highlight that the
22 parties in interest in this case are working diligently to
23 use the Debtors' resources in a proper way.

24 And I always take seriously when elected officials
25 file documents in my cases, but there is a difference

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1 between courts and elected officials, and courts need to
2 proceed in the way that courts are set up to proceed.

3 Thankfully, Bankruptcy Court being courts that preside over
4 collective proceedings can have the input of very
5 sophisticated, intelligent, responsible people, which is
6 what I think is happening here.

7 And we are answerable to the public in different
8 ways than politicians are, and I understand that, too. But
9 I'm mindful of everyone's concern to use the Debtor's
10 resources in a proper way. So I appreciate the update.

11 MR. HUEBNER: Thank you, Your Honor. Mr.
12 Robertson?

13 MR. ECKSTEIN: If I may, just very briefly,
14 Kenneth Eckstein on behalf of the ad hoc committee. Just to
15 close this issue out, I did want to briefly just address the
16 issue of the emergency relief fund.

17 THE COURT: Right.

18 MR. ECKSTEIN: I want to assure the Court from the
19 standpoint of the ad hoc committee, that we're working
20 extremely diligently, and coordinating with both the states
21 and with the municipalities on the committee, as well as
22 with the dissenting states, to try to come together as
23 quickly as possible with the governmental view of how the
24 \$200 million can get out as quickly as possible, as
25 efficiently as possible, and the expectation is that will

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1 ultimately be coordinated with the Debtor and the creditors'
2 committee, and it is very, very high on our priority list
3 right now, and I wanted the Court to appreciate the degree
4 of attention that the matter is getting from the standpoint
5 from the state and municipalities.

6 THE COURT: Great, thank you.

7 MR. TROOP: Your Honor, (indiscernible).

8 THE COURT: You're all working together.

9 MR. TROOP: Spent a lot of time (indiscernible)

10 THE COURT: Okay. That was Mr. Troop, by the way,
11 for the transcript.

12 MR. TROOP: Your Honor, probably (indiscernible).

13 THE COURT: Okay.

14 MR. ROBERTSON: Thank you. Your Honor, for the
15 record, Christopher Robertson, Davis Polk & Wardwell on
16 behalf of the Debtors. There are five uncontested matters
17 on the agenda today. There are two extension, motions to
18 extend time, one to assume or reject leases. The other
19 three remove actions to the Bankruptcy Court, and there are
20 three uncontested retention applications.

21 THE COURT: Right.

22 MR. ROBERTSON: We filed certificates of no
23 objection with respect to the four matters for which no
24 objections were filed. With respect to the PJT, the U.S.
25 Trustee had filed an objection. That objection was resolved

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1 and withdrawn, unless anybody has any questions, or you have
2 any questions, Your Honor, we would ask that these orders be
3 entered.

4 THE COURT: Okay, does anyone have anything to say
5 on the testimony to extend the assumption rejection deadline
6 on the leases? On the removal deadline extension motion?
7 On the retention of Jones Day and Arnold & Porter Kay
8 Scholer as special 327(e) counsel for the purposes stated in
9 those applications? Or the PJT retention application?

10 Okay, I've reviewed each of those motions and
11 applications, and I'll grant each of them, based on my
12 review. I have, I believe an emailed order on the 365
13 motion. I don't think I have orders on the other one, so if
14 you could just send those in.

15 MR. ROBERTSON: Certainly.

16 THE COURT: I'd appreciate it.

17 MR. ROBERTSON: Will do, and thank you, Your
18 Honor.

19 THE COURT: Okay.

20 MR. ROBERTSON: The only contested item on today's
21 agenda is the Debtor's application to employ Ernst & Young
22 as its auditor. There is one objection to the application
23 from the United States Trustee. Frankly, Your Honor, we
24 made every effort to present an uncontested agenda today.
25 The application, the objection, our reply papers were all on

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1 file in November before the November 19 hearing date, before
2 we adjourned this matter to today. We made an effort to use
3 the additional month productively, twice reaching out to the
4 U.S. Trustee to see if we could provide any additional
5 information, assurances, or explanation to resolve the
6 objection.

7 Without going into great detail, the U.S. Trustee
8 raised a handful of questions on the calls that we had, and
9 we diligently responded to every information request. We
10 received no inbounds from the U.S. Trustee's office with
11 respect to the application. Between November --

12 THE COURT: I'm sorry, you received no what?

13 MR. ROBERTSON: Inbound requests for information.

14 THE COURT: Okay.

15 MR. ROBERTSON: Between November 15th, when the
16 objection was filed, and today. Look, I only say this
17 because I hope that the Trustee's concerns are not grounded
18 in a lack of information regarding EY's historical or
19 current role. And so unfortunately, we believe that this
20 matter is unresolvable without appearing before Your Honor.

21 THE COURT: Okay.

22 MR. ROBERTSON: I will briefly touch only on four
23 points.

24 THE COURT: Well, can I -- is this, have you
25 narrowed down the issues at all? I mean, as I understand

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1 it, there's a -- I have a supplemental and a first
2 supplemental or second supplemental --

3 MR. ROBERTSON: Certainly.

4 THE COURT: -- declaration by Devon Brady on this.

5 MR. ROBERTSON: I'll speak to that briefly. Look,
6 I think in all honesty, the answer to your question is no.
7 The first supplemental declaration we've prepared in very
8 short order, you know, there's a three-day reply period. We
9 had a preview, I think, of the U.S. Trustee's objection. We
10 had prepared that for a supplemental reply, provided by
11 draft of the U.S. Trustee to try to see if the disclosures
12 in that reply, I'm sorry, in that supplemental rejection, in
13 that supplemental declaration would resolve the Trustee's
14 concerns.

15 Unfortunately they did not, but we filed the
16 supplemental declaration. In any event, the second
17 supplemental declaration is just mechanical, Your Honor.

18 The Debtors and EY --

19 THE COURT: It attaches the executed retention
20 agreement.

21 MR. ROBERTSON: It has nothing really to -- no, I
22 think material bearing on the matter before you today.

23 THE COURT: Okay.

24 MR. ROBERTSON: And so I like to touch only on the
25 four points: who is EY, what is the scope of their

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1 retention, what is entirely outside of the scope of EY's
2 retention, and why EY does not hold or represent adverse
3 interest to the Debtors, and is disinterested, for purposes
4 of 327(a) of the Bankruptcy Code.

5 So first, the Debtors seek to retain a specific
6 legal entity, which is Ernst & Young LLP, a U.S. entity as
7 their auditor. So when I refer to EY, I'm referring to the
8 specific U.S. entity. As stated in Paragraph 5 of the first
9 supplemental declaration of Mr. Davon Brady in support of
10 the application, who is here today, the deal team that
11 performs auditing services for Purdue audits just one other
12 shareholder-owned entity, which is the Debtor's landlord.
13 There is no rule that I've ever heard of that says that an
14 auditor cannot also audit a company, a company, also its
15 landlord.

16 As Mr. Brady explains, any work performed for
17 shareholder-owned entities outside of the U.S. are performed
18 by other member firms of Ernst & Young Global, Limited.
19 This work is not simply done by different deal teams, it's
20 done by separate legal entities, with different individual
21 members and personnel. And so it would be grossly
22 misleading to say that quote-unquote Ernst & Young is the
23 auditor for all of the shareholder entities -- for the
24 shareholder-owned entities.

25 Second, the scope of EY's audit work is clearly

1 set forth in the application. EY is being retained to
2 finalize the audit for the Debtor's 2018 consolidated
3 financial statements -- audit the 2019 financial statements,
4 and audit and report on the financial statements of certain
5 401k and pension plans for which certain Debtors act as
6 sponsors.

7 Your Honor, at the risk of oversimplifying, the
8 Debtor's management is responsible for the preparation and
9 fair presentation of financial statements in conformity with
10 GAAP that are free of material misstatement. And it's EY's
11 responsibility to express an opinion as to the financial
12 statements based on this audit, on their audit. Generally
13 applicable accounting standards require that EY plan and
14 perform the audit to obtain reasonable assurance about
15 whether the financial statements are free of material
16 misstatement. An audit involves performing procedures to
17 obtain audited evidence about the amounts and disclosures in
18 the financial statements.

19 There's much more to it, and a cursory read of our
20 -- of the Debtor's customer programs motion will demonstrate
21 how complex the Debtor's sales and distribution chain is.
22 But at a high level, that's what we're talking about here.
23 We're talking about retaining EY as the Debtor's independent
24 external auditor.

25 Testing distribution transactions with the

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1 shareholder entities, if any, is just one miniscule part of
2 the audit process of the Debtor's year-end financial
3 statements. In fact, the Debtors have not made any
4 distributions to the shareholders since 2017. But because
5 it's the focus of the U.S. Trustee's objection, I'd like to
6 briefly address it. To be clear, all decisions and
7 diligence as to the structure of actual payments, if any,
8 from the Debtors to their shareholders were made by the
9 Debtors and their advisors, with no input from EY. EY's
10 testing of any --

11 THE COURT: I'm sorry, can you say that again?

12 MR. ROBERTSON: Gladly, Your Honor. all decisions
13 and diligence as to the structure of actual payments, if
14 any, in any given year, were made by the Debtors and their
15 advisors, with no input from EY. EY's testing of any such
16 distributions is limited to validating payments already made
17 to shareholders through tracing the disbursements of the
18 payments by one, examining evidence such as bank wire
19 support for bank disbursement information, and two,
20 confirming that the amounts of any dividends or
21 distributions so tested were authorized in the minutes of
22 the Board of Directors.

23 THE COURT: But this is -- but they're completing
24 the audit for 2018, and then doing 2019, and the Debtors
25 have a company by company-wide policy of making no

1 distributions to shareholders, so there's nothing to test.

2 MR. ROBERTSON: That's correct, Your Honor. So on
3 a go-forward basis, and for what we're engaging EY, there's
4 absolutely nothing to test in this regard.

5 THE COURT: Okay.

6 MR. ROBERTSON: The trustee's objection, as I
7 understand it, raises questions about what EY did in years
8 prior, when the Debtors were making distributions. And so,
9 what I mean to clarify here is this is the process, this is
10 what EY's auditor was doing with respect to these
11 distributions in historical areas.

12 THE COURT: Okay.

13 MR. ROBERTSON: Look, EY is the right auditor to
14 provide these services. I'm not going to belabor this
15 point, but the trustee raises a concern, or a point in the
16 reply to the effect that there's no efficiency exception for
17 the conflicts rules.

18 And we think that's right, but I think it's worth
19 noting that engaging another auditor here would be insanely
20 and unnecessarily expensive. It will cost about \$75,000 to
21 finish 2018 audit. To redo that audit, if it's even
22 possible at this point, would be much more expensive with
23 another auditing firm. Going forward, EY's familiarity with
24 the business will make it much more efficient to do the 2019
25 audit than engaging a new external auditor. And finally, as

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1 we note in our reply, failure to do the audit of the 401(k)
2 and pension plans may result in fines as high was \$1100 a
3 day. So this is important for the Debtors.

4 Third is maybe the most important point, which is
5 what EY is not doing. So EY is not advising whether to
6 pursue, or strategically how to pursue any potential
7 litigation claims against the Debtors' shareholders. EY
8 does not sign off on, in the words of the trustee's
9 objection, any transaction between the Debtors and the
10 shareholders in any way. EY only tests the distributions,
11 and they described previously. EY is not reviewing or
12 investigating historical transactions related to
13 distributions of the Debtors' shareholders.

14 And the last point is worth pausing on. You know,
15 on Page 2 of the objection, and again on Page 8, the Trustee
16 states that consideration of the amount of the cash
17 contribution will require a review or investigation of any
18 transactions relating to distributions to the consenting
19 shareholders. We agree, Your Honor, as evidenced by the
20 350-plus page report of the special committee that we filed
21 on Monday evening. Tellingly, EY had nothing to do with the
22 production of that report. It is also telling that the
23 economic parties in interest in these cases who have every
24 incentive to ensure that no professional serving the estates
25 is compromised by any entanglement with the Debtor

1 Shareholders has objected to EY's role in these cases.

2 And fourth, very briefly, EY does not hold or
3 represent any interest, material or adverse to the Debtor's
4 estates as a disinterested person, as such term is defined
5 in Section 101(14) of the Bankruptcy Code, as required under
6 Section 327(a) of the Bankruptcy Code. And we address this
7 point extensively in our reply.

8 But you know, I would note that the U.S. Trustee
9 does not explain how the fact that independent member firms
10 of Ernst & Young Global Limited -- excuse me, Your Honor --
11 performing services for shareholder entities in foreign
12 jurisdictions, to give EY any incentive to act contrary to
13 the interest of the Debtors' estates. The simple fact is
14 that there is no such incentive, and if the basis of the
15 objection is that EY signed off on, quote-unquote, or is
16 investigating historical transfers from the Debtors to their
17 shareholders, the premise of the objection is fundamentally
18 flawed.

19 At this time, I would like to admit the three
20 objections submitted by Mr. Brady into evidence. The
21 initial declaration is attached as Exhibit B to the Debtor's
22 application to retain EY. There is also a supplemental
23 declaration Docket Number 499, and a second supplemental
24 declaration at Docket 673. As I noted earlier, Mr. Brady is
25 in the courtroom today, and I understand that Mr. Masumoto

1 would like to ask Mr. Brady a few questions. I would cede
2 the podium to Mr. Masumoto unless Your Honor has any
3 questions.

4 THE COURT: Okay, Mr. Brady, if you could come up
5 to the witness stand, please?

6 MR. ROBERTSON: Thank you, Your Honor.

7 THE COURT: Have a seat. Would you raise your
8 right hand, please? Do you swear or affirm to tell the
9 truth, the whole truth, and nothing but the truth, so help
10 you God?

11 MR. BRADY: I do.

12 THE COURT: And it's D-E-V-O-N, B-R-A-D-Y?

13 MR. BRADY: Yes.

14 THE COURT: Okay, and Mr. Brady, I have three
15 declarations that you submitted as your -- in support of the
16 application to retain Ernst & Young, LLP. The first one's
17 dated November 5, 2019. Second one, which is labeled
18 supplemental declaration, is dated November 18, 2019. And
19 the last is dated, which is labeled second supplemental
20 declaration, is dated December 18, 2019. Sitting here
21 today, and knowing that these would be used as your direct
22 testimony, is there anything in them you'd wish to change?

23 MR. BRADY: No.

24 THE COURT: Okay, so they're admitted as Mr.
25 Brady's direct testimony.

1 (Brady Declarations Admitted as Direct Testimony)

2 THE COURT: You can go ahead, Mr. Masumoto.

3 CROSS-EXAMINATION OF DEVON BRADY

4 BY MR. MASUMOTO:

5 Q Thank you, Your Honor. Good afternoon. My name is
6 Brian Masumoto for the Office of the United States Trustee.
7 Good afternoon, Mr. Brady.

8 A Good afternoon.

9 Q MR. Brady, with respect to your -- I'll refer to them
10 as your initial declaration, first supplemental and second
11 supplemental, is that all right?

12 A Yes.

13 Q With respect to your first, the initial declaration,
14 the disclosures you made with respect to the Sacklers were
15 contained in Paragraph 27 and 28, is that correct?

16 A Yes.

17 Q Okay. In Paragraph 27, you refer to Ian White. Ian
18 White provides the Sackler -- when I refer to Sackler, it's
19 the Sackler, the trusts and any of the related entities --
20 certain services for the Sackler Family, is that correct?

21 A Yes.

22 Q And similarly, there was a reference to the Ernst &
23 Young Global Limited member firms outside the United States
24 providing services to various Sackler entities, is that
25 correct?

1 A Yes.

2 Q All right, in your first supplemental declaration, you
3 provided some additional detail as to those services, is
4 that correct?

5 A Yes.

6 Q With respect to the initial declaration, did you draft
7 that declaration in its entirety?

8 A The initial one?

9 Q Yes.

10 A With the help of internal counsel and external counsel,
11 yes.

12 Q So with respect to Paragraph 27 and 28, did you provide
13 that language or was that language drafted by counsel?

14 A I don't exactly remember. It was a combination of all
15 parties.

16 Q Okay, at the time you drafted that declaration -- I'm
17 sorry, was it your individual counsel, or was it Debtor's
18 counsel that worked with you on the declaration?

19 A It would be --

20 Q Or both?

21 A I'd be both, I believe.

22 Q Okay, so at the time the initial declaration was
23 drafted, and Paragraphs 27 and 28 were drafted, did you
24 disclose, or were all of the -- were all counsel aware of
25 the information that you provided in your supplemental

1 declaration? Your initial, first supplemental declaration.

2 A I believe we were waiting for consent, to be able to
3 provide the additional information that's in the first
4 supplemental declaration.

5 Q I'm sorry, what consents did you require in the first
6 supplemental?

7 A We were waiting for consents to disclose the additional
8 information, the nature of the services that's in the first,
9 the first supplemental disclosure.

10 Q Was there any reason why you didn't make reference to
11 the consents and the intent to supplement the disclosure?

12 A In which, in which --

13 Q In your initial disclosure, in your initial
14 declaration, did you indicate that you would be filing a
15 more detailed supplemental declaration regarding those
16 services?

17 A I don't remember at the moment. I don't have the
18 declaration in front of me. I don't remember if it was
19 stated or not.

20 Q Okay, if -- with respect to Paragraph 27, it states in
21 addition to its work for the Debtors, EY, LLP provides
22 services for various trusts that are held by members of the
23 Sackler Family (Sackler Trusts) and for certain entities
24 that are owned by one or more Sackler Trusts, or by members
25 of the Sackler Family, (Sackler Entities). So does that

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1 refresh your recollection as to whether or not you were
2 advising as to any supplemental disclosures?

3 A I'm sorry, I'm not understanding the question.

4 THE COURT: I'm not either. And why are we
5 bothering with this, since there is a supplement?

6 MR. MATSUMOTO: Well, Your Honor part of the
7 concern in this case is what details should have been
8 provided at the outset. Why wasn't the more detailed and
9 expanse of services indicated in the original retention?
10 Quite frankly, it raises concerns from my perspective that
11 these detailed services were not initially identified. Or,
12 at the very least, if as testified, the reason it wasn't
13 disclosed is because they intended to follow up with such
14 more detailed description.

15 Part of the concern is whether or not the
16 intention was in fact minimized, the relationship with the
17 E&Y entities and the Sackler entities.

18 THE COURT: Well, why don't you ask that question?

19 BY MR. MASUMOTO:

20 Q Well, Mr. Brady, was there an intent to, attempt to
21 minimize the nature of the services that were being rendered
22 to the Sackler entities in your first initial declaration?

23 A No.

24 Q So what, when you drafted the initial declaration, it's
25 your representation that you intended to file a supplement

1 with the more detailed services?

2 A I don't remember exactly, but we were waiting for
3 consents to be able to disclose the nature of those services
4 that are provided by Ernst & Young Global firms.

5 Q All right, let me ask you a question with respect to
6 the audit report that was recently filed with the Bankruptcy
7 Court, the work being performed by --

8 THE COURT: It's not an audit report.

9 BY MR. MASUMOTO:

10 Q I'm sorry, the special cash transaction report that was
11 filed with the Court. Are you familiar with that report?

12 A I'm familiar with it from media outlets, yes.

13 Q Do you know -- was E&Y consulted when that work on the
14 report was commenced?

15 A We were asked to participate in an interview by
16 AlixPartners, but we did not end up participating at all.

17 Q Okay, when did that request occur?

18 A June of '19. June of 2019.

19 Q Okay. And you said who made the request?

20 A AlixPartners.

21 Q AlixPartners requested to interview you?

22 A Yes.

23 Q And you said that that interview did not occur?

24 A I referred it to my counsel, and I don't know where it
25 went from there, but we did not participate.

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1 Q Okay. Was there any reason why, to your knowledge, was
2 there any reason why E&Y wasn't requested to perform that
3 report?

4 A I am not aware of any reasons.

5 Q Would E&Y have been capable of providing that report?

6 A To be honest, I don't know. I'd have to go and check
7 our independence rules and our service protocols. But I
8 don't know if we would be able to or not.

9 Q Okay. During the course of that, the preparation of
10 that report, were you aware as to whether or not the audit
11 report -- I'm sorry, the special report investigated or
12 analyzed your compliance with the accounting rules?

13 MR. TOBAK: Mark Tobak, Davis Polk & Wardwell for
14 the Debtors. I hesitate to make the first evidentiary
15 objection in these matters, but I'm not sure that there's
16 been any foundation laid to why Mr. Brady would understand
17 when, the various time that report was being prepared, which
18 was the basis of this question. So if we could be a little
19 bit clearer for the record about the question being asked.

20 BY MR. MATSUMOTO:

21 Q The question being asked is whether or not Mr. Brady
22 was aware of whether AlixPartners was analyzing or reviewing
23 its audit statements for compliance with accounting
24 standards.

25 MR. TOBAK: Mark Tobak, Davis Polk and Wardwell,

1 for the Debtors. I hesitate to make the first evidentiary
2 objection to these matters, but I'm not sure that there's
3 been any foundation laid to why Mr. Brady would understand
4 when the period of time that report was being prepared,
5 which is the basis of this question. So, if we could be a
6 little bit clearer for the record about the question being
7 asked.

8 MR. MASUMOTO: The question that's being asked is
9 whether or not Mr. Brady was aware of whether AlixPartners
10 was analyzing or reviewing its audit statements for
11 compliance with accounting standards.

12 A I was aware, only because they asked to interview me,
13 so I just -- I drew that conclusion. But there was no other
14 communication or requests after that first request for an
15 interview.

16 Q Are you aware that the special report indicates in the
17 disclaimer section that AlixPartners has not subjected the
18 information contained herein to an examination in accordance
19 with generally accepted auditing or attestation standards.

20 THE COURT: He hasn't read the report. He just
21 knows about it from media outlets.

22 MR. MASUMOTO: Your Honor, again, once again, I
23 have no idea, again, what sort of contact he had with
24 AlixPartners.

25 THE COURT: He testified to that, that was in

1 answer to a question about five minutes ago.

2 MR. MASUMOTO: Very well, Your Honor.

3 Q Mr. Brady, how long have you been involved in audits
4 with respect to the Debtor?

5 A I've been on the Audit Team for 19 years.

6 Q So, you were involved with the audit of Purdue and its
7 related entities in 2015?

8 A Yes.

9 Q Were you familiar with the engagement letter that was
10 executed between the Debtor and E&Y?

11 A Yes.

12 Q Did you sign it or would someone else have signed it?

13 A It's signed by a member, the Debtor's management, and
14 it's signed by Ernst & Young.

15 Q Okay. Are you aware of any changes to E&Y's
16 responsibility as auditor between 2015 and subsequent years?

17 A No, no.

18 MR. MASUMOTO: Your Honor, may I approach the
19 witness with a copy of the engagement letter for 2015?

20 THE COURT: Okay.

21 Q Mr. Brady, may I direct your attention to the second
22 page, paragraph six of that engagement letter, which is
23 dated December 15, 2015? Do you see paragraph six?

24 A Yes, yes.

25 Q Paragraph six, the first sentence in paragraph six is,

1 if we determine that there is evidence that fraud or
2 possible illegal acts may have occurred, we will bring such
3 matters to the attention of the appropriate level of
4 management. Is that a correct recitation of that provision?

5 A Yes.

6 Q Okay. Is that different from the language with respect
7 to the 2018 and 2019 engagement letters?

8 A I don't have the letter in front of me. I would think
9 they were similar language.

10 Q I'm looking at your second supplemental declaration,
11 which attaches a copy of the November 7, 2018 engagement
12 letter. In paragraph six it reads, "If we are made aware of
13 evidence that fraud or possible noncompliance with laws and
14 regulations may have occurred, that could have a possible
15 material and adverse impact to the consolidated financial
16 statements. We will bring such matters to the attention of
17 the appropriate level of management." Does that sound like
18 an accurate recitation of the provision?

19 A I don't have it in front of me but it sounds correct.

20 Q Is there any reason for the difference in language,
21 whereas, wherein the 2018 you say, "If you're made aware of
22 evidence that fraud ...," etc., and the 2015 language, "If we
23 determine that there is evidence of fraud ..."?

24 A I'm not sure. I don't know.

25 Q Was there any change in E&Y's obligation to investigate

1 or uncover fraud between those two different engagement
2 letters?

3 A I'm not aware of any. I don't know the reason why the
4 language changed. I'd have to ask my company. But I don't
5 know.

6 Q All right. Just a final question. If, for example,
7 it's determined that there were errors or omissions in prior
8 audits, and there are potential causes of action against
9 E&Y, what would E&Y's position be? Would you be able to
10 continue the performance of your services?

11 A If there was what? Please explain that.

12 Q If, in fact, based upon examination by other
13 individual, other entities, there is some concern about your
14 prior audit reports, the audit statements that you filed in
15 prior years, and there is a cause of action brought against
16 you, is there any -- what is E&Y's position with respect to
17 its ongoing performance of its audit services for 2018 and
18 2019?

19 A We stand behind our previously issued reports. If some
20 party came to Ernst & Young with an accounting problem, it
21 would be evaluated for potentially restatement of the
22 financial statements, but that exercise would have to be
23 gone through by all parties and agreed to by EY. If there
24 was some -- someone told EY that they believed that the
25 financial statements were materially misstated, that would

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1 be evaluated. It would have to be evaluated by the parties
2 in EY to make a determination if it had to be restated.

3 Q Would it affect your performance of the services for
4 which you're seeking to be retained, i.e., the completion of
5 2018 and the audit for 2019?

6 A The individual situation would have to be evaluated on
7 its seriousness and its merits.

8 MR. MASUMOTO: No further questions, Your Honor.

9 THE COURT: Okay. Any redirect?

10 MR. TOBAK: Just a few questions, Your Honor. CROSS-

11 EXAMINATION

12 BY MR. TOBAK:

13 Q Good afternoon, Mr. Brady.

14 A Good afternoon.

15 Q Mark Tobak, Davis Polk & Wardwell LLP for the Debtors.
16 You were asked a series of questions by Mr. Matsumoto about
17 the difference between disclosures in your declaration and
18 in your first supplemental declaration. Do you recall that?

19 A Yes.

20 Q Do you recall the date of your first declaration? Was
21 it November 5th?

22 A Yes.

23 Q Okay. And is it correct that your supplemental
24 declaration was filed on November 18?

25 A Yes.

1 Q Only a few weeks afterwards, is that correct?

2 A Yes.

3 Q At the time, why is it that there's more detail about
4 work that EY LLP performed for members of the Sackler
5 Family, and trusts for the benefit of the Sackler Family in
6 the first supplemental declaration than there is in the
7 initial declaration?

8 A We were waiting for consents from the correct parties
9 to be able to disclose the nature of services provided by
10 global EY firms.

11 Q And when you say consents, could you explain a little
12 bit on what a consent is that you were waiting for?

13 A We were waiting for the ability to disclose the nature
14 of the services in the declaration, from the, essentially,
15 the clients abroad.

16 Q And is it correct that -- you say the ability in
17 consent, is that because you have a professional obligation
18 not to disclose confidential information without the
19 client's consent?

20 A Correct.

21 Q And were you waiting for that consent at the time you
22 filed your declaration on November 5th?

23 A Yes.

24 Q No further questions.

25 THE COURT: Okay. You could step down.

1 MR. HUEBNER: Your Honor, before I turn the podium
2 back to Mr. Robertson, just because the Special Committee
3 Report has been referred to several times and that's not
4 something that has visibility into, there's one thing that I
5 do want to make very clear, both for the Court and for
6 everyone: The AlixPartners report, which obviously, that
7 Davis Polk special (indiscernible) lawyers, were deeply
8 involved in, has, very early on, an entire page called
9 "Sources Relied Upon," and I do think it's important just to
10 pause for a minute, that everybody understand the
11 extraordinary depth and breadth of the work that was done.
12 And there are 13 items. One of the 13 items is the audited
13 financials from the past. The other 12 were independent
14 verification of every single dollar that left the company.
15 And so, it's important, just for the avoidance of doubt, the
16 13 items are: the entity organizational charts; the SAP
17 accounting system information; internally prepared
18 distribution reports, audited financial statements; internal
19 financial statements reports, schedules and SAP accounting
20 records; accounting and approved documentation for cash
21 distributions; the complaints filed by the states; payroll
22 and compensation records; legal expense reports prepared by
23 the legal department; pension benefit records and related
24 documentation; T and E reports (indiscernible) directly;
25 fringe benefit records and interviews of Purdue, PPI,

1 Rhodes, TXP and One Stanford Realty employees.

2 And so, just to be clear, I don't think a special
3 committee would have agreed to retain E&Y to work and
4 prepare the reports for any number of reasons. A, because
5 it's not the appropriate function of the company's auditor;
6 B, because they've been around for a long time, and part of
7 what's, I think, very important for the Court and the world,
8 is that new professionals with no prior connectivity to the
9 situation, who were not there prior to 2018, did all of the
10 work of verification. And so, again, just for the avoidance
11 of doubt, cross-checking their like line item by line item
12 work in the Debtor's accounting records against the audited
13 financials, there's only one of 13 sources of information
14 that the Special Committee Report Team relied upon. And
15 just to reinforce what Your Honor said, as far as we know,
16 and I think we know, there were no distributions in 2018,
17 whose audit is just about over. And there certainly will be
18 none in 2019, which is the time period for the
19 (indiscernible) that we're talking about.

20 So, just from the sort of, you know, purity of
21 process, integrity of independent analysis and
22 investigation, I think the fact that they are being retained
23 as the auditor is something that I want to make sure that
24 there's no chance it gets lost in the shuffle. They're not
25 doing any of the advocacy and analysis work there. And I

1 apologize to E&Y, they are just the auditor and not more
2 than that. Mr. Robertson?

3 MR. ROBERTSON: Thank you. For the record again,
4 Christopher Robertson, Davis Polk on behalf of the Debtors,
5 just three very, very brief points.

6 THE COURT: I think we should hear the objection
7 first. I mean I still don't really quite understand the
8 objection, but why don't we hear it? I mean, you can
9 respond to the objection.

10 MR. MASUMOTO: Thank you.

11 THE COURT: I understand that the Debtors have the
12 burden of proof, but you already had opening argument, which
13 I normally have after the evidence, but let's just go to the
14 objection.

15 MR. MASUMOTO: Brian Masumoto for the Office of
16 the United States Trustee. Your Honor, the concern that the
17 US Trustee has, is that E&Y, as a retained professional, has
18 certain fiduciary obligations to the estate. What
19 seemingly, belatedly was disclosed, was that they also
20 represent the Sackler family which, in this context is a
21 critical component of this bankruptcy. Part of the main
22 structure of the going-forward effort of this case is to
23 determine whether or not the proposed \$3 billion
24 contribution by the Sacklers is adequate. The cash transfer
25 itself indicated that there's about \$10.4 billion that the

1 Debtors, since 2008, distributed to the Sacklers. In
2 addition, as indicated in this special report, the special
3 report does not include non-cash transfers which,
4 apparently, AlixPartners is ongoing. It's been -- I've been
5 advised that the amount of non-cash transactions is
6 significantly less than the amount of the cash transaction.
7 But we're talking about fairly large numbers. I believe the
8 non-consenting states filed it in their objection.

9 THE COURT: They're providing -- they're doing an
10 audit.

11 MR. MASUMOTO: Yes, Your Honor, and the audit
12 would presumably, in the past, have audited those transfers
13 that were made to --

14 THE COURT: Adverse interest is defined in the
15 present tense.

16 MR. MASUMOTO: That's correct, Your Honor, and it
17 seems to me that certainly some of the transfers that have
18 occurred may have subsequent repercussions or consequences
19 in subsequent years.

20 THE COURT: How, in an audit, of the new years,
21 where there's absolutely no evidence that there will be any
22 -- there have been or will be, in the two audit years that
23 they're being retained to handle?

24 MR. MASUMOTO: Your Honor, I'm not an accountant,
25 I can't say, but I would --

1 THE COURT: No, you're not, but you do have an
2 obligation to explain to me why there is an adverse interest
3 here as opposed to mere speculation --

4 MR. MASUMOTO: Your Honor, the distributions that
5 occurred --

6 THE COURT: -- of a potential lawsuit over
7 something that may have happened in the past, where here's
8 no allegation of any auditing issue whatsoever, unlike in
9 the WorldCom case, unlike in the Delphi case, where there
10 was. And nevertheless, the Courts in both of those cases
11 said that the concern raised by the objectors, was not even
12 a potential actual conflict but a hypothetical, speculative
13 conflict. And consistent with AroChem, that is not a
14 disqualifying adverse interest, period.

15 MR. MASUMOTO: Your Honor, from the standpoint of
16 view as Trustee, the fact that it had substantial experience
17 and background with respect to the Debtors prior financial
18 condition, could have a potential impact upon its -- the
19 performance of the services currently.

20 THE COURT: How, in the conduct of an audit? How
21 would you even be motivated to somehow do that in an
22 unprofessional or conflicted manner? The only issue you've
23 raised is one over transactions with members of the Sackler
24 family or their trust, but it is -- the record is crystal
25 clear, for 2018 and 2019, there are no such transactions.

1 MR. MASUMOTO: Your Honor, I can't necessarily
2 predict whether or not there may be any subsequent
3 ramifications as a result of prior audits, whether or not
4 there are any flow-through or follow-on effects from prior
5 audits. And in that context if, in fact, there were any
6 problems that did occur in the prior years, it would seem to
7 me that they would have a concern as to whether or not their
8 current audit --

9 THE COURT: But Mr. Masumoto, that's entirely
10 hypothetical. I mean, you're imagining something where
11 there isn't even an allegation as far as audit problems as
12 opposed to the problems, the issues, the very serious issues
13 that the Debtors have separately, with separate
14 professionals, investigated and are continuing to
15 investigate, with the Creditors Committee and multiple other
16 interested parties, including state governments. Whereas,
17 in WorldCom, there were restated financial statements;
18 whereas in Delphi, there were ongoing class action lawsuits
19 against the auditor. And even there, the courts found that
20 this was too speculative an objection. I just -- I don't
21 see it here. I understand the US Trustee is a watchdog.
22 And I understand that the initial disclosure was, in fact,
23 vague as to what the role was on an ongoing basis, a present
24 tense basis. But given that they are solely being an
25 auditor, and given that you would have to get through

1 enormous levels of oversight as far as transfers to the
2 Sacklers, which would be the only thing they'd be auditing
3 in 2018 and 2019 that would raise a conflict, either direct
4 or indirect -- I just -- this is -- this should -- I'm going
5 to deny this objection. I mean, this just -- it doesn't
6 make sense. I'm sorry.

7 Under the case law, which is clear, you have to
8 have shown to be retained that you do not hold or represent
9 an adverse interest to the bankruptcy estate, and that you
10 must be disinterested. I don't believe there is any
11 allegation that the whole point exists here.

12 It's just based on representing an adverse
13 interest which, frankly, under the case law, is recognized
14 by multiple cases, overlaps with the disinterestedness
15 standard, although the disinterestedness standard lays out
16 various types of representations that can be a case where
17 one is interested if they are materially adverse.

18 I just don't see material adversity here. The
19 cases are clear, stemming from In Re AroChem 176 F.3d 610
20 623 (2d Cir. 1999), "The term adverse interest means one, to
21 possess or assert any economic interest that would tend to
22 lessen the value of the bankruptcy estate, or that would
23 create either an actual or potential dispute in which the
24 estate is a rival claimant; or two, to possess a
25 predisposition under circumstances that render such a bias

1 against the estate."

2 Now, the courts, in interpreting that language,
3 have dealt with the issue of a potential conflict, not an
4 actual current conflict, but a potential one, and repeatedly
5 have held that a professional has a disabling conflict if it
6 has either a meaningful incentive to act contrary to the
7 best interests of the estate and its sundry creditors; an
8 incentive sufficient to place those parties at more than
9 acceptable risk, or a reasonable perception of one. That's
10 Granite Partners, 219 B.R. 22, at page 33, (Bankr. S.D.N.Y.
11 1998).

12 Leslie Fay has held, or has added a third fillip
13 on that concept of plausibility in saying that if an
14 incentive exists it would tend to lessen the value of the
15 estate or predisposition of bias against the estate.
16 There's a disabling conflict. But the Courts have then gone
17 onto say, repeatedly, and as most recently by the Second
18 Circuit at In re Ampal-American Israel Corp, 691 Fed. Appx.
19 12, (2d. Circuit, May 24, 2017). They have to be presently
20 competing adverse interests. So, you look at the present
21 tense.

22 And further, as stated in AroChem, and is
23 reiterated in Enron, WorldCom and in re Delphi Corp. 2006,
24 US District Lexus 34423, (SDNY May 30, 2006).

25 Speculative concerns about potential conflicts

1 that are not currently actual, or rise to the level of a
2 reasonable, plausible legitimate conflicts that are not
3 currently actual or rise to the level of a reasonable,
4 plausible legitimate concern that a separate economic
5 interest will lessen the value of the services to the
6 bankruptcy estate or somehow affect the diligence of the
7 professional in dealing with bankruptcy estate, is not
8 enough. You need more than that.

9 And the WorldCom case that I referenced earlier,
10 311 B.R. 151 (Bankruptcy SDNY 2004), and the Delphi case
11 that I just cited, both involved firms that were hired to do
12 audits, who had previously worked for the Debtors when there
13 was far more concern about the audits themselves that had
14 previously been done by those firms. But the role in the
15 particular audit didn't tie into their conflict, which is
16 with regard to a past audit.

17 Here there's no conflict raised with regard to a
18 past audit. And the conflict that they have admittedly, the
19 potential conflict here, is because they represent Sackler
20 entities. And the they we're talking about here is E&Y LLP,
21 with regard to the landlord doing their audit, when there's
22 no issue that the rent has been too low or mischaracterized,
23 and foreign E&Y entities with regard to foreign Sackler
24 entities.

25 But again, we're talking about an audit of a

1 company that's not making any transfers to any of the
2 Sacklers. It doesn't exist. If the issue comes up ever,
3 they have a duty to disclose before they get paid. And
4 frankly, they have a duty to disclose it promptly if there
5 ever is something more than a speculative conflict. But it
6 just, on this record, it doesn't exist. It's not --
7 therefore, at this point -- it was when you filed it -- at
8 this point it's not an appropriate objection under the facts
9 of this case. So, I'm going to deny the objection and grant
10 the application.

11 MR. MASUMOTO: Very well, Your Honor. Thank you.

12 THE COURT: Okay.

13 MR. HUEBNER: Your Honor, one last, I guess, note
14 on this point. I don't want to -- it's dangerous to
15 prognosticate, but I'm quite confident that had this special
16 committee's work uncovered that when the actual ledger,
17 cross-checks and SAP payment crosschecks system were done,
18 that had the things that Mr. Masumoto is worried might be
19 the case, which is that the audits inaccurately stated or
20 understated or hid or didn't have distributions to
21 shareholders, the probability that theirs would be
22 proceeding today with (indiscernible) of ENY is that a
23 minimum --

24 THE COURT: Maybe. You don't know. As both the
25 WorldCom and Delphi cases that I cited state, there are

1 problems with audits but they come in different degrees.
2 Some of them are just involved, just involve exercises of
3 judgment, and you can sue over exercises of judgment. It's
4 much harder to win on exercises of judgment. And if there's
5 clear fraud or clear negligence, it's another story. So,
6 you just don't know, but no new allegations anywhere here.

7 MR. HUEBNER: That's even better then. That's my
8 point, which is E&Y's cataloging of the distributions has
9 now been crosschecked in a 400-page report by a subsequent
10 professional who went back to the ledger, and we actually
11 don't know of any difference. And that, I think is a
12 fortiori squared in the other direction.

13 If a problem comes up, we will certainly move to
14 address it and discuss it, but in fact, their work has been
15 checked by AlixPartners and the Special Committee and it
16 appears to be accurate from what we know.

17 THE COURT: Okay, in any event, that's --
18 certainly, no one has said anything to the contrary. S, I
19 really think we are in the realm of pure speculation at this
20 point.

21 MR. HUEBNER: Agree, Your Honor.

22 THE COURT: And the case law is clear, that's not
23 a basis to disqualify a professional retention.

24 MR. HUEBNER: Thank you, Your Honor. We'll submit
25 an order. So, Your Honor, there is one last item on the

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1 agenda, and actually, not a bad segue from integrity and
2 transparency from the perspective of the Debtors.

3 Your Honor, when you were speaking at the end of
4 the introductory session, and you referenced that the Court
5 takes very seriously filings made by political entities who
6 wear sort of two hats, I wasn't sure if you were referring
7 to the quote, notice with respect to public health filed.

8 THE COURT: Anyone who -- frankly, anyone who
9 files something I take seriously. But that includes
10 politicians. They're not in a lesser category. But I was
11 referring to the letters from senators.

12 MR. HUEBNER: I wasn't sure. So, Your Honor, I'm
13 going to begin and then pause for a minute because I think
14 that the Court's reflection back actually matters how we
15 proceed from there.

16 Your Honor, as the Court may be aware, ten days
17 ago the Ad Hoc Group of Consenting States filed a pleading -
18 - dissenting states, apologies -- denominated the states'
19 notice of public health information to protect Purdue
20 patients, even though it was actually filed by the
21 dissenting states, not by the states.

22 This so-called notice is very troubling to the
23 Debtors both procedurally and substantively. It is a
24 pleading that is not only, not only for today, but really
25 for any hearing ever, because it seeks no relief of any

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1 kind, either from this Court or any other court. Rather, it
2 is essentially a position paper that makes a variety of
3 claims and, in essence, levels some quite serious and
4 unfounded accusations against the Debtors.

5 The non-consenting states courteously sent us a
6 draft of it before they filed it. We strongly and
7 repeatedly asked them to please not file it, but instead set
8 up meetings, calls with us that we are ready to do, starting
9 almost immediately, to discuss the substance of the issues
10 in the document. They refused to do that and instead chose
11 to file the pleading.

12 So, Your Honor, here's sort of the choice. I have
13 five brief points that sort of part of me wants to make,
14 because there things in this pleading that we find very
15 difficult to leave on the record without response, including
16 things with respect to potential gargantuan administrative
17 claims that are currently being incurred, which has
18 implications to all parties in the case.

19 On the other hand, candidly, I don't want to --
20 part of what I would be talking about is that taking the
21 docket of a Federal Court and turning it into a public blog
22 where people can just file things that they would like other
23 people to read is one of my five points as to its
24 impropriety and I'm actually also a little bit wary and
25 reluctant in balancing, trying to not let what in many cases

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1 are statements -- statements of law, statements of fact --
2 and accusations go unresponded to.

3 On the other hand, I -- for example, if the Court
4 says, I haven't read it, I'm not going to read it, I don't
5 think it belongs on the docket and no one else should be
6 doing things like this, then maybe I can desists, but if
7 those things are not true, we're just -- we're put in a very
8 difficult situation. When people file pleadings that seek
9 relief and attach admissible evidence, as lawyers, we know
10 what to do.

11 We try to work it out. If not, we file responsive
12 pleadings. There's a hearing scheduled. There are rules
13 that govern. When people just file missiles at us on the
14 docket of our own case, it's much more challenging to know
15 what to do and so, again, I only have five points to make,
16 Your Honor.

17 THE COURT: Well, I would encourage you not to
18 make them. I think that -- I mean, I have read the notice
19 and I have it in front of me, actually. And maybe it would
20 help you to hear how I view it. First of all, this isn't
21 just a blog notice. The states and governmental entities
22 that file this notice are active players in this case and
23 they have taken serious positions in the case when matters
24 were before me to be decided, so I don't discount it.

25 On the other hand, it's very clear from the notice

1 that this does not seek relief. So I viewed it as, in some
2 respects, simply showing the parties in interest in the case
3 that these states are thinking seriously about the problems
4 that they address, but that they're not seeking relief.
5 They're not invoking a request for findings. They're just
6 stating their views. I also think they were careful to say
7 that they actually don't believe that there are any claims
8 today, but that they have a concern.

9 I'll also note that the nine actions listed in the
10 notice are all listed in the form of questions and that's
11 fair because they acknowledge that these issues are issues
12 to think about, not to act on. They're asking, I believe,
13 the Debtors and other parties in interest to think about
14 these issues and that's all I took it as. Part of those
15 issues may -- some of those issues may relate to the
16 emergency fund, maybe, because some of the questions could
17 be answered with the expenditure of money.

18 Some really involve public relations. Some are
19 probably appropriate for a monitor to consider. And I'm
20 sure there are answers that other parties in interest in the
21 case could provide in a dialog that should be behind the
22 scenes, not open in public at this point. So I don't think
23 the Debtors or any other party in interest is waiving any
24 rights by not responding to this. The more one does it, the
25 less meaningful it is. I'm looking over at counsel for the

1 24 states at that point.

2 MR. TROOP: (indiscernible).

3 THE COURT: Well, what I'm saying is, what I'm
4 saying is, fine to do it once. You don't want to just keep
5 doing it because it just loses its effect and it becomes
6 more of a statement that's more for people outside the case
7 and that that's really -- loses its meaning as far as what's
8 actually being done. So I think we should leave it at that.

9 MR. HUEBNER: That --

10 THE COURT: People should discuss these points as
11 well as other points that are relevant to, again, how should
12 the Debtor properly address the opioid crisis. How should
13 address it? It is a legitimate question to ask whether
14 there should be some tradeoff between the value of the
15 Debtor and actions that might reduce the value of the
16 Debtor. That's a legitimate question.

17 MR. HUEBNER: We certainly agree.

18 THE COURT: I think that's something that a
19 monitor would address as well as the Debtors and the
20 Creditors Committee and everyone else in the case. I view
21 this as trying to break down that question into little more
22 detail. And I'm sure, since these nine points are not
23 demands, they are questions that people could ask questions
24 back. I would strongly request that they not be filed on
25 the docket as questions because that doesn't really mean

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1 anything, but that dialog or multiparty discussion occur
2 behind the scenes.

3 And I'm assuming it is occurring and will occur in
4 the first instance as part of discussing the emergency fund,
5 but also in connection with the plan. I mean, just the
6 first four of these cases are things that, for example, the
7 Debtors discuss like providing naloxone.

8 MR. HUEBNER: Yes.

9 THE COURT: The Debtor raised that on the first
10 day of the case. The emergency fund could well include, for
11 example, providing, in effective ways, for substance use
12 treatment. An emergency fund and a plan could provide in
13 effective ways for PR and whether it's the FDA or not -- and
14 I said this at the injunction hearing -- the parties have
15 the ability in this case to set a standard, not an FDA
16 standard but a best practices standard. They can do that.

17 So I don't necessarily view this as a hostile
18 pleading. It doesn't seek relief. It just raises points
19 that I firmly believe that the parties are already
20 discussing and the Debtors have raised themselves.

21 MR. HUEBNER: So, Your Honor, I will, of course
22 take the Court's direction. It's actually more complicated
23 than that and, frankly, the refusal to engage in dialog and
24 instead file it was a complicate choice and some of the
25 items that are raised in the nine questions are expressly

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1 items that were addressed differently in the injunction and
2 self-injunction agreed to, negotiated, and executed by this
3 Court and now, we get a pleading a few weeks later,
4 essentially, to

5 THE COURT: Well --

6 MR. HUEBNER: So, look, I will refrain --

7 THE COURT: But they're stated as questions, not
8 demands -- although that's how it was reported -- and I
9 believe that --

10 MR. HUEBNER: But Your Honor --

11 THE COURT: -- a little slack needs to be given
12 because you're dealing with so many governmental entities,
13 so many political agendas. It's hard to corral folks
14 sometimes.

15 MR. HUEBNER: Yeah.

16 THE COURT: I would urge everyone, as I think both
17 their counselors said, all 50 states -- well, maybe 48
18 because of the two settlements, but then --

19 MR. HUEBNER: Right.

20 THE COURT: -- you have D.C. and the territories -
21 -

22 MR. HUEBNER: And, Your Honor, your example --

23 THE COURT: -- should be working together with the
24 Debtors and this is give an take and, frankly, if you do it
25 behind the scenes and come up with a result that hasn't yet

1 been come up with on a national basis for sure, to me,
2 politically, everyone's ahead of the game as well as, of
3 course, societally. So please get on with it.

4 MR. HUEBNER: Yeah. So Your Honor, I'll --

5 THE COURT: That's to everyone here, not just to
6 the Debtors. That's to everyone here.

7 MR. HUEBNER: Yeah. Understood for today. Again,
8 because some of these issues are, in fact, before the FDA,
9 required to be before the FDA, as also set forth in this
10 self-injunction, there are things in here including -- which
11 I'm not going to get into today -- the statistics and the
12 allegations that we actually don't think we can even respond
13 to, because candidly, harming at this point the estate is
14 actually detracting from the ability to provide naloxone and
15 provide rescue therapies and provide amelioration.

16 THE COURT: This is a discussion that should be
17 had behind the scenes.

18 MR. HUEBNER: We've --

19 THE COURT: If someone want to object to an actual
20 proposal, they'll have the ability to do so. Hopefully,
21 they won't. Hopefully, it'll be consensual.

22 MR. HUEBNER: And that was our primary point, Your
23 Honor, which I think we've achieved which is hopefully we'll
24 have more productive behind the scenes conversations as Your
25 Honor has abjured us at multiple hearings.

1 THE COURT: Okay.

2 MR. HUEBNER: We have nothing further, then, Your
3 Honor. I think --

4 THE COURT: Okay.

5 MR. HUEBNER: -- you've addressed this last issue
6 which was of grave concern to us and we'll figure out the
7 way forward in light of the Court's direction.

8 THE COURT: Okay.

9 MR. TROOP: And, Your Honor, if I may, just a
10 couple of minutes?

11 THE COURT: Briefly, okay.

12 MR. TROOP: Sure, just a couple things. On this
13 last point, we are -- we, the members of our group, are
14 prepared to discuss every one of those and other issues that
15 address public health on a current basis with the Debtors
16 and other constituents, but there were a couple of things
17 earlier in the case I just want to confirm for you, although
18 I -- just to be clear.

19 THE COURT: All right.

20 MR. TROOP: No dissenting state is exercising its
21 (indiscernible) rights today. On the AlixPartners report,
22 we think the Debtors, we're sure that others besides our
23 group asked them to put it on the docket as a way to avoid
24 fights over what it was and what it said and we think that's
25 extremely important.

1 On Landau, Your Honor, there is some information
2 confirmation that we're still waiting. I don't want to
3 suggest to you that we will actually get to a compromise on
4 Landau, but if we don't, we're working to make sure with the
5 Debtors that what you have in front of you is a full record
6 of what Dr. Landau received in payments prior to the
7 filling, which I think is the factual issue that --

8 THE COURT: And what he gave up. And what he gave
9 up.

10 MR. TROOP: Absolutely, Your Honor. Both sides of
11 that equation.

12 THE COURT: Okay.

13 MR. TROOP: Nothing to say further on the monitor,
14 the protective order. The defense presentation on the state
15 stipulations, Your Honor, we are making progress. There
16 continues to be an open issue about whether there should be
17 a distinction between what members of the non-consenting
18 state group get and members of the consenting state group
19 get. We're trying to work around that creatively, but we
20 might need to be back to you on some help.

21 On ERF, I reiterate what I said earlier about
22 we're all working on that as well. Lots of time has been
23 spent. On the dischargeability objection issue, and I'm
24 sure that this is embedded in what will happen in the bridge
25 order, that whatever -- if there's some interim relief given

1 with regard to the deadline, it will need to extend beyond
2 the date on which there's a hearing on the motion to extend
3 the deadline because otherwise, there'll be a disconnect, so
4 just in terms of that from a logic perspective, I talked to
5 Mr. (indiscernible) about it earlier today.

6 He completely understood it, but just so you know
7 when you see the bridge order, if there's not something that
8 lines up between the hearing date and the bridged extension
9 of the deadline, it's to address to the --

10 MR. HUEBNER: Well, I mean, I don't -- I think the
11 Court will agree we don't need a bridge order.

12 THE COURT: I don't think you need a bridge order
13 because it's not worded in the sense that -- I mean, there
14 will be a hearing on it and under the local rules that
15 extends to the date of the hearing and I will rule from the
16 bench and everyone will rely on it and --

17 MR. TROOP: I guess I'm just identifying what I
18 see as a --

19 THE COURT: I don't --

20 MR. TROOP: -- as an issue on the bridge order,
21 but on the local rules --

22 THE COURT: I don't think it is. I mean, I think
23 -- there's no such thing as so ordering a record, but
24 frankly, this is a pretty simple order to so order and if it
25 doesn't get entered that day, I will state my ruling on the

1 record and everyone can rely on it.

2 MR. HUEBNER: Yeah. Your Honor, for
3 (indiscernible), our hope is that there'll be a notice of
4 presentment and that hopefully there'll be able to object --

5 THE COURT: Right.

6 MR. HUEBNER: -- and it'll even be entered before
7 the January 6 (indiscernible). We'll just -- we'll figure
8 it out.

9 MR. TROOP: That'll be great.

10 THE COURT: Okay.

11 MR. TROOP: Thank you, Your Honor.

12 THE COURT: All right.

13 MR. TROOP: Just didn't (indiscernible).

14 Appreciate your time.

15 THE COURT: Okay. All right.

16 MR. HUEBNER: Your Honor, I hope it's not out of
17 order to wish everybody happy holidays. It's been --

18 THE COURT: Happy holidays to everyone.

19 Everyone's entitled to take a few days off, I suppose.

20 MR. HUEBNER: Your Honor, we're going to take that
21 as an order of the Court.

22 THE COURT: And one more cliché, I hope everyone
23 here does not let the perfect become the enemy of the good
24 and sometimes a lot of hot air can be spent on these issues
25 when really compromise is warranted, and these issues now,

1 I'm talking about the emergency fund and ultimately a
2 distribution mechanism under a plan. So I don't mind
3 raising questions about big thought issues, but narrow it
4 down, quickly.

5 MR. HUEBNER: Thank you.

6 THE COURT: Okay.

7

8 (Whereupon these proceedings were concluded at
9 3:32 PM)

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1 C E R T I F I C A T I O N

2

3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

5

6 Sonya
7 Landanski Hyde

Digitally signed by Sonya
Landanski Hyde
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